



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 7325-97

20 October 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED],
[REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed enclosure (1) with this Board requesting a better characterization of service than the discharge under other than honorable conditions issued on 29 January 1982.

2. The Board, consisting of Mr. Bartlett, Mr. Taylor and Ms. Madison, reviewed Petitioner's allegations of error and injustice on 19 October 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 28 September 1978 at age 18. At that time, he had completed 12 years of education and attained an AFQT score of 93, which placed him in Mental Group I.

d. Petitioner then served until 1 August 1979 without any disciplinary infractions. On 1 August 1979 he received nonjudicial punishment (NJP) for an unauthorized absence of about two days. The record shows that he completed training and on 29 September 1979 he reported to the USS BARBOUR COUNTY (LST 1195).

Petitioner received NJP on 16 May 1980 for larceny of less than \$1.00.

e. On 24 July 1980, while in an unauthorized absence status, Petitioner was evaluated by a civilian psychiatrist. The psychiatrist's impression was that Petitioner suffered from a profound depressive reaction and recommended release from the Navy because continued stress might cause some sort of psychotic episode. The psychiatrist also noted his "heavy abuse of marijuana." On 31 July 1980, Petitioner received his third NJP for an unauthorized absence of about eight days and missing ship's movement.

f. Petitioner was referred for a psychiatric evaluation because of the recommendation of the civilian psychiatrist. In a report dated 8 August 1980 the Navy psychologist found as follows:

.... (He) exhibits some characterological features of an immature and passive-aggressive nature, along with a longstanding history of excessive polydrug usage. These characterological traits are not felt sufficient to warrant a formal diagnosis. There is no need for further psychiatric evaluation at this time. He is considered responsible for his behavior and fit for full duty.

The psychologist noted that Petitioner admitted to a longstanding history of excessive polydrug usage. Accordingly, he recommended an evaluation for drug dependence so that a rehabilitation program could be considered.

g. Petitioner then served until 1 May 1981 without any further disciplinary infractions. On that date he received his fourth NJP for possession of marijuana. On 28 May 1981 the commanding officer noted that he had served in an above average manner during the last deployment, opined that he had potential for further useful service, and recommended that he be sent to a Navy Drug Rehabilitation Center (NDRC) for treatment. Petitioner was then an unauthorized absentee from 9 to 28 August 1981 and his assignment to NDRC was canceled. On 1 September 1981, the squadron medical officer found that no psychiatric diagnosis was warranted at that time but Petitioner would benefit by a formal drug rehabilitation program. Petitioner was convicted by a summary court-martial on 18 September 1981 of the foregoing 18 day period of unauthorized absence.

h. On 6 November 1981 Petitioner was notified of separation

processing by reason of misconduct. Four days later he received his fifth NJP for an unauthorized absence of about five hours. An administrative discharge board met on 20 November 1981 and found that Petitioner had committed misconduct and recommended a discharge under other than honorable conditions. On 3 December 1981 the commanding officer recommended discharge under other than honorable conditions and stated that Petitioner's performance and military behavior had deteriorated to an intolerable level, and his request for another chance at drug rehabilitation had been denied. Subsequently, Petitioner was found not to be drug dependent, and told the doctor that he had not use drugs in three months. On 25 January 1982 the discharge authority directed discharge under other than honorable conditions. Petitioner was so discharged on 29 January 1982.

i. Evidence has been submitted showing that sometime during the period from May 1982 to January 1983 that Petitioner was diagnosed as having paranoid schizophrenia. He was hospitalized for this condition from 7 to 19 January 1983. The attending psychiatrist stated that his behavior while in the Navy was not misconduct but a consequence of his severe psychotic illness.

j. Attached to enclosure (2) is an advisory opinion from a Staff Psychiatrist for the Bureau of Medicine and Surgery. The advisory opinion states, in part, as follows:

... With the benefit of hindsight, there were a number of items in his history which were all consistent with the prodrome phase of schizophrenia. I'm not sure any of them could have been realistically identified at the time however. ... Based on the limited information available, I would conclude that his mental condition was at least a contributing factor to his misconduct while on active duty. Because the record does seem to indicate that he had the capacity to judge between right and wrong, I find it very difficult to totally exonerate his behavior. I think there have been enough questions raised however, to allow the BCNR some room to be lenient in their decision.

k. Also attached to enclosure (2) is a rebuttal to the advisory opinion submitted by Petitioner's mother. She states that her son was diagnosed with paranoid schizophrenia four months after discharge in May 1982. She contends that this timing, in addition to the psychiatric evaluations, is clearly consistent with the likelihood that her son was in a prodromal stage of schizophrenia and was experiencing delusions and clinical depression during his Navy service which made him incapable of performing his duties. She points out that the Navy

psychiatrist recommends leniency and that the evidence is overwhelming that her son suffered a severe mental breakdown while in the Navy and that he should not be saddled for life with a bad discharge.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. In reaching its decision, the Board notes Petitioner's admission of extensive drug use and his record of misconduct while in the Navy. In addition, the Board notes that he was found by the Navy psychologist to be responsible for his behavior. However, the Board also notes that he was diagnosed as paranoid schizophrenic shortly after discharge. Given the circumstances, the Board agrees with the comments in the advisory opinion that his mental illness may have contributed to his misconduct. The Board concludes that any doubt should be resolved in Petitioner's favor and the discharge should now be recharacterized to general as a matter of clemency.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that on 29 January 1982 he was issued a general discharge by reason of misconduct vice the discharge under other than honorable conditions actually issued on that date.
- b. That this Report of Proceedings be filed in Petitioner's naval record.
- c. That the Department of Veterans Affairs be informed on request that Petitioner's application was received on 25 September 1997.
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

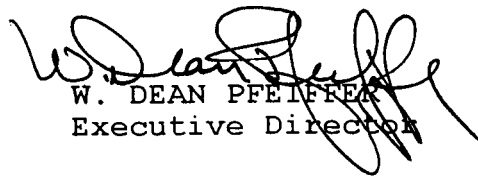
ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the

authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director